HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 1136 OF 2006

Between:

Indukuri Sailaja Kumari & others

..... Appellants

AND

The District Collector,
West Godavari District,
Eluru & others

.....Respondents

:: J U D G M E N T::

Counsel for the appellants : Shri K.V. Satyanarayana

Dated: 01.11.2006

Per G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 21.04.2006 passed by the learned Single Judge in Writ Petition No.28212 of 2005, whereby he rejected the appellants' prayer for issue of a mandamus to the respondents to give them the benefit of the decision contained in Memo No. 4244/Irr-II/1/80-9 dated 10.08.1981 and Memo No.2014/Irr-II/1/85-14 dated 12.11.1987 in terms of which, the persons whose lands were acquired for irrigation projects were granted temporary lease till the submersion of the land.

The lands of the appellants were acquired for Yerrakalava Reservoir Project by following the procedure prescribed under the Land Acquisition Act, 1894 and they were paid compensation. After receiving compensation, the appellants filed Writ Petition No.10135 of 2005 for issue of a mandamus to the respondents to allow them to lease out usufruct of the trees in the acquired land. In the affidavit filed in support of the writ petition, it was averred that the petitioners had submitted representation dated 10.04.2005 to the authorities for grant of permission to lease out usufruct of the trees in pursuance of Memo dated 10.08.1981, but no action has been taken on their request. During the pendency of the writ petition, the petitioners filed WPMP.No.13159 of 2005 for issue of an interim direction to the respondents to dispose of their representation. By an order dated 29.04.2005, the learned Single

Judge accepted the prayer for interim relief and directed the respondents to decide the representation. Thereafter, Executive Engineer, Indira Sagar RMC Division, Jangareddygudem passed order dated 05.07.2005, whereby he declined the request of the petitioners by observing that the lands are in elevation from +81.50 to +83.50 and the reservoir is gradually impounded during the period from July to October, 2005. The learned Single Judge dismissed the writ petition by recording the following observations:

> " I have gone through the letter dated 05.07.2005 under which the Executive Engineer, Indirasagar RMC Division, Jangareddygudem considered the interim direction passed by this Court and informed the writ petitioners that their request cannot be acceded since the entire gardens are submerged. In view of the situation explained by the Executive Engineer in his letter dated 05.07.2005, the request of the respondents cannot be accepted."

The appellants did challenge that order by filing an appeal under Clause 15 of the Letters Patent, but they did not pursue the same. Instead, they filed Writ Petition No.28212 of 2005 for directing the respondents to grant them temporary lease till the submersion of the land in the irrigation project.

The learned Single Judge declined relief to the appellants by observing that the persons whose lands were acquired and who received compensation cannot claim any right over the acquired land. The learned Single Judge also held that the memos issued by the State Government cannot be made basis for issue of a mandamus in favour of the petitioners (appellants herein).

Shri K.V. Satyanarayana argued that failure of the State

Government to extend the benefit of the decision contained in memos dated 10.08.1981 and 12.11.1987 is discriminatory and violative of Article 14 of the Constitution and, therefore, a mandamus be issued to the respondents to entertain the appellants' prayer for grant of temporary lease to cultivate the lands.

In our opinion, there is no merit in the contention of the learned counsel and the appeal is liable to the dismissed. In the writ petition filed by them, which was registered as Writ Petition No.10135 of 2005, the appellants could have made a prayer for issue of a direction to the respondents to grant temporary lease of the land in terms of memos dated 10.08.1981 and 12.11.1987. However, the fact of the matter is that they did not make such prayer. Therefore, the second petition filed by them i.e., Writ Petition No.28212 of 2005, should have been dismissed by the learned Single Judge by invoking the principle underlying the provisions contained in Order 2 Rule 2 of the Code of Civil Procedure and by applying the ratio of the Supreme Court's judgment in **Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior**[1]. The fact that the learned Single Judge did not adopt that course cannot enure to the appellants' advantage and, in our considered opinion, they are liable to be non-suited by applying the ratio of the above noted judgment of the Supreme Court.

We are further of the view that the decision contained in memos dated 18.08.1981 and 12.11.1987 vide which permission was granted to the authorities of the Irrigation Department to

temporarily lease out the acquired land to the owners cannot be construed as a policy decision taken by the Government, which is required to be followed for all times to come. In any case, such decision cannot be enforced by invoking the doctrine of equality enshrined in Article 14 of the Constitution of India.

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the main appeal, W.A.M.P.No.2309 of 2006 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

01.11.2006
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[1] AIR 1987 Supreme Court 88